

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DIANE JOHNSON, on behalf of herself and others similarly situated,	:	CIVIL ACTION
Plaintiff,	:	
v.	:	NO. _____
MATTRESS WAREHOUSE, INC.,	:	CLASS/COLLECTIVE ACTION
Defendant.	:	JURY TRIAL DEMANDED
	:	

COMPLAINT – CLASS/COLLECTIVE ACTION

Diane Johnson (“Plaintiff”) brings this lawsuit against Mattress Warehouse, Inc. (“Defendant”), seeking all available relief under the Fair Labor Standards Act (“FLSA”), 29 U.S.C. §§ 201, et seq., and the Pennsylvania Minimum Wage Act (“PMWA”), 43 P.S. §§ 333.101, et seq. Plaintiff’s FLSA claim is asserted as a collective action under 29 U.S.C. § 216(b), while her PMWA claim is asserted as a class action under Federal Rule of Civil Procedure 23. See Knepper v. Rite Aid Corp., 675 F.3d 249 (3d Cir. 2012) (collective and class claims may proceed together in the same lawsuit).

JURISDICTION AND VENUE

1. Jurisdiction over the FLSA claim is proper under 29 U.S.C. § 216(b) and 28 U.S.C. § 1331.
2. Jurisdiction over the PMWA claim is proper under 28 U.S.C. § 1367.
3. Venue in this Court is proper under 28 U.S.C. § 1391.

PARTIES

4. Plaintiff resides in Philadelphia, PA.
5. Defendant is a corporate entity headquartered in Frederick, MD.

6. Plaintiff is an employee covered by the FLSA and PMWA.
7. Defendant is an employer covered by the FLSA and PMWA.

FACTS

8. Defendant operates over 250 retail mattress stores located in this judicial district and beyond.

9. Defendant employs salespeople who work at the stores, selling mattresses and related goods to store customers.

10. Plaintiff has been employed by Defendant as a salesperson since the Summer of 2017 and has been assigned to various stores throughout Southeastern Pennsylvania.

11. Each 14-day pay period, Defendant pays Plaintiff and other salespeople the greater of (i) a base hourly rate multiplied by the number of hours worked during the pay period or (ii) the combined amount of bonuses and commissions earned during the pay period. See, e.g., Plaintiff's Offer Letter, attached as Exhibit A ("You will be paid on a bi-weekly basis. Your base hourly rate will be \$13.50 (no overtime wages), or combined commissions & bonus incentives earned during any given pay period, whichever amount (hourly rate or combined commissions and bonus) is greater . . ."). Plaintiff's base hourly rate is \$13.50.

12. Under the above compensation plan, Plaintiff and other salespeople can work for long stretches of time without their purported commissions or bonuses ever having any impact on their pay.

13. For example, Plaintiff was paid her "base hourly rate multiplied by the number of hours worked" during every pay period between April 22, 2018 and October 6, 2018.

14. Plaintiff and other salespeople regularly work over 40 hours per week. For example, Plaintiff was credited with working 106.18 hours during the two-week period between

February 10, 2019 and February 23, 2019.

15. Plaintiff and other salespeople do not receive any overtime pay for hours worked over 40 per week. See, e.g., Exhibit A (“no overtime wages”).

CLASS/COLLECTIVE ACTION ALLEGATIONS

16. Plaintiff brings her FLSA claim as a collective action pursuant to 29 U.S.C. §216(b) and brings her PMWA claim as a class action pursuant to Federal Rule of Civil Procedure 23. She sues on behalf of all salespeople employed by Defendant during any week within the past three years. The putative FLSA collective covers all salespeople throughout the United States, while putative Rule 23 class is limited to salespeople employed in Pennsylvania.

17. Plaintiff’s FLSA claim should proceed as a collective action because she and other putative collective members, having worked pursuant to the common compensation policies described herein, are “similarly situated” as that term is defined in 29 U.S.C. § 216(b) and the associated decisional law.

18. Class action treatment of Plaintiff’s PMWA claim is appropriate because, as alleged below, all of Federal Rule of Civil Procedure 23’s class action requisites are satisfied.

19. The class, upon information and belief, includes hundreds of salespeople, all of whom are readily ascertainable based on Defendant’s payroll records and are so numerous that joinder of all class members is impracticable.

20. Plaintiff is a class member, her claims are typical of the claims of other class members, and she has no interests that are antagonistic to or in conflict with the interests of other class members.

21. Plaintiff and her lawyers will fairly and adequately represent the class members and their interests.

22. Questions of law and fact are common to all class members, because, *inter alia*, this action concerns Defendant's common compensation policies, as described herein. The legality of these policies will be determined through the application of generally applicable legal principles to common facts.

23. Class certification is appropriate under Federal Rule of Civil Procedure 23(b)(3) because common questions of law and fact predominate over questions affecting only individual class members and because a class action is superior to other available methods for the fair and efficient adjudication of this litigation.

COUNT I
(Alleging FLSA Violations)

24. All previous paragraphs are incorporated as though fully set forth herein.

25. The FLSA requires that employees receive overtime premium compensation "not less than one and one-half times" their regular pay rate for hours worked over 40 per week. *See* 29 U.S.C. § 207(a)(1).

26. Defendant violated the FLSA by failing to pay Plaintiff and the FLSA collective overtime premium compensation for all hours worked over 40 per week.

27. In violating the FLSA, Defendant acted willfully and with reckless disregard of clearly applicable FLSA provisions and, as such, willfully violated the FLSA.

COUNT II
(Alleging PMWA Violations)

28. All previous paragraphs are incorporated as though fully set forth herein.

29. The PMWA requires that employees receive overtime premium compensation "not less than one and one-half times" the employee's regular pay rate for hours worked over 40 per week. *See* 43 P.S. § 333.104(c).

30. Defendant violated the PMWA by failing to pay Plaintiff and the Rule 23 class overtime premium compensation for all hours worked over 40 per week.

JURY DEMAND

Plaintiff demands a jury trial as to all claims so triable.

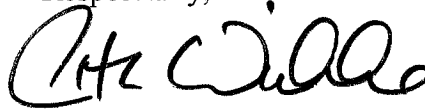
PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of herself and other members of the class/collective, seeks the following relief:

- A. Unpaid overtime wages and prejudgment interest;
- B. Liquidated damages to the fullest extent permitted under the FLSA;
- C. Litigation costs, expenses, and attorneys' fees; and
- D. Such other and further relief as the Court deems just and proper.

Date: February 14, 2020

Respectfully,




Peter Winebrake
R. Andrew Santillo
Mark J. Gottesfeld
Winebrake & Santillo, LLC
715 Twining Road, Suite 211
Dresher, PA 19025
(215) 884-2491


Plaintiff's Counsel

CONSENT TO BECOME PARTY PLAINTIFF

I hereby consent, pursuant to Section 16(b) of the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 216(b), to become a party plaintiff in the accompanying FLSA action. I understand that I will be bound by the judgment of the Court on all issues in this case.



Signature



Print Name

MATTRESS WarehouseSM

June 22, 2017

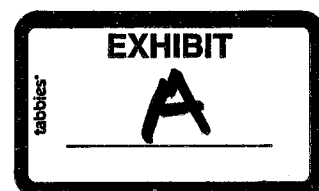
Diane Johnson
5639 North 20th Street
Philadelphia, Pa. 19144

Dear Diane,

Mattress Warehouse is pleased to confirm our verbal offer for the position of Sales Professional. This position reports to Peter Varcos, District Sales Manager, with duties similar to those discussed during your interview including but not limited to all daily sales and showroom operations guidelines, excellent customer service, store maintenance, selling process execution, and customer follow up. Your start date will be July 10, 2017, or sooner if you are available.

You will be paid on a bi-weekly basis. Your base hourly rate will be \$13.50 (no overtime wages), or combined commissions & bonus incentives earned during any given pay period, whichever amount (hourly rate or combined commission & bonus) is greater, less applicable withholdings paid in accordance with Mattress Warehouse's normal payroll practices.

All compensation, benefits and employer programs will be administered in accordance with Mattress Warehouse's policies and procedures, and may include waiting periods and other eligibility requirements to participate. These policies and programs may change from time to time, without notice, during the course of your employment.





Diane Johnson, Offer Letter, page 2 of 3 Revised

Mattress Warehouse provides for a variety of Company-paid benefits including basic life insurance with a buy-up option and short and long-term disability plans. A 401K plan with an employer matching contribution is also available after one year of service. You will be eligible to participate in the CareFirst Health Benefits program which includes prescription drug coverage and dental and vision options beginning October 1, 2017.

This offer is contingent upon the following:

- **Compliance with federal I-9 requirements**
- **Background clearance**
- **Execution of all standard New Hire forms and agreements, including the At Will Employment and Proprietary Information Agreement**
- **Non-Compete and Non-Solicitation Agreement**

Employment with Mattress Warehouse is At-Will and therefore not for a specific term and may be terminated by either you or Mattress Warehouse at any time without notice. The at-will nature of employment at Mattress Warehouse constitutes the entire agreement between you and Mattress Warehouse and any changes to these terms must be in writing and signed by you and the company's General Manager or the Director of Human Resources. **All compensation consideration in this agreement is confidential in nature, and any breach of confidentiality will result in disciplinary action, up to and including employment termination and/or adjustment in the terms of this agreement.**

To indicate your acceptance of Mattress Warehouse's offer, please sign and date this letter in the space provided below and return it to Peter Varcos within 48 Hours.

Sincerely,

Eric Ciarrocchi

Eric Ciarrocchi
Recruiting & Organizational Development
Mattress Warehouse



Diane Johnson, Offer Letter, Page 3 of 3, Revised

I have read this offer letter in its entirety and agree to the terms and conditions of employment.

Employee Signature /Date

Employee Printed Name

JS 44 (Rev. 06.17)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

DIANE JOHNSON, on behalf of herself and others similarly situated

(b) County of Residence of First Listed Plaintiff Philadelphia
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name Address and Telephone Number)

Winebrake & Santillo, LLC, 715 Twining Road, Suite 211, Dresher PA
19025. Ph (215) 884-2491. Other Counsel Listed in Complaint

DEFENDANTS

MATTRESS WAREHOUSE, INC.

County of Residence of First Listed Defendant Frederick (MD)
(IN U.S. PLAINTIFF CASES ONLY)

NOTE IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED

Attorneys (If Known)

Unknown

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☒ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for Nature of Suit Code Descriptions

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veterans Benefits <input type="checkbox"/> 160 Stockholders Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <input checked="" type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer w/Disabilities - Employment <input type="checkbox"/> 446 Amer w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS <input type="checkbox"/> Habeas Corpus <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity)

Fair Labor Standards Act

Brief description of cause

Failure to pay overtime compensation

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint

JURY DEMAND:

☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions)

JUDGE

DOCKET NUMBER

DATE

2/14/20

SIGNATURE OF ATTORNEY OF RECORD

Diane Winebrake

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IF P

JUDGE

MAG JUDGE

FEB 18 2020

FEB 18 2020

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DESIGNATION FORM

(to be used by counsel or pro se plaintiff to indicate the category of the case for the purpose of assignment to the appropriate calendar)

Address of Plaintiff: 5639 North 20th Street, Philadelphia, PA 19144

Address of Defendant: 4949 New Design Road, Frederick, MD 21703

Place of Accident, Incident or Transaction: Philadelphia, PA

RELATED CASE, IF ANY:

Case Number: _____ Judge _____ Date Terminated _____

Civil cases are deemed related when **Yes** is answered to any of the following questions

- | | | | |
|---|---|------------------------------|--|
| 1 | Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| 2 | Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| 3 | Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action of this court? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| 4 | Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |

I certify that, to my knowledge, the within case ☐ is / ☒ is not related to any case now pending or within one year previously terminated action in this court except as noted above

DATE 2/14/20 Peter Winebrake PA-80496
Attorney-at-Law / Pro Se Plaintiff Attorney I D # (if applicable)

CIVIL: (Place a v in one category only)

A. Federal Question Cases:

- ☐ 1 Indemnity Contract, Marine Contract, and All Other Contracts
- ☐ 2 FEIA
- ☐ 3 Jones Act-Personal Injury
- ☐ 4 Antitrust
- ☐ 5 Patent
- ☐ 6 Labor-Management Relations
- ☐ 7 Civil Rights
- ☐ 8 Habeas Corpus
- ☐ 9 Securities Act(s) Cases
- ☒ 10 Social Security Review Cases
- ☒ 11 All other Federal Question Cases
(Please specify) Fair Labor Standards Act

B. Diversity Jurisdiction Cases:

- ☐ 1 Insurance Contract and Other Contracts
- ☐ 2 Airplane Personal Injury
- ☐ 3 Assault, Defamation
- ☐ 4 Marine Personal Injury
- ☐ 5 Motor Vehicle Personal Injury
- ☐ 6 Other Personal Injury (Please specify) _____
- ☐ 7 Products Liability
- ☐ 8 Products Liability - Asbestos
- ☐ 9 All other Diversity Cases
(Please specify) _____

ARBITRATION CERTIFICATION

(The effect of this certification is to remove the case from eligibility for arbitration)

I, Peter Winebrake, counsel of record or pro se plaintiff, do hereby certify

☒ Pursuant to Local Civil Rule 53.2, § 3(c) (2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs.

☐ Relief other than monetary damages is sought.

DATE 2/14/20 Peter Winebrake PA-80496
Attorney-at-Law / Pro Se Plaintiff Attorney I D # (if applicable)

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38

FEB 18 2020

GJPIN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIACASE MANAGEMENT TRACK DESIGNATION FORM

DIANE JOHNSON

v.

MATTRESS WAREHOUSE, INC.

CIVIL ACTION


20 8914

NO.

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

- (a) Habeas Corpus - Cases brought under 28 U.S.C. § 2241 through § 2255. ()
- (b) Social Security - Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ()
- (c) Arbitration - Cases required to be designated for arbitration under Local Civil Rule 53.2. ()
- (d) Asbestos - Cases involving claims for personal injury or property damage from exposure to asbestos. ()
- (e) Special Management - Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.)
- (f) Standard Management - Cases that do not fall into any one of the other tracks. (X)

<u>2/14/20</u> Date <u>(215) 884-2491</u> Telephone	 <u>PETER WINEBRAKE</u> Attorney-at-law <u>(215) 884-2492</u> FAX Number	<u>PLAINTIFF</u> Attorney for <u>p.winebrake@winebrakelaw.com</u> E-Mail Address
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FEB 18 2020